

## **REMARKS**

Claims 1-30 and 32 are pending in the application. By this amendment, Claim 31 has been cancelled. The basis for these amendments can be found throughout the specification, claims and drawings as originally filed. No new matter has been added.

The preceding amendments and the following remarks are believed to be fully responsive to the outstanding Office Action and are believed to place the application in condition for allowance. In view of the preceding amendments and the following remarks, the rejections are traversed and reconsideration of this application is respectfully requested.

The Applicant's representative would like to thank the Examiner for the interview conducted on September 21, 2004. Various claims were discussed in light of the cited art of record. No agreement as to the allowability of the claims was reached during the interview.

## **CLAIM OBJECTIONS**

Minor non-narrowing amendments have been made to Claims 27 and 28 to overcome the objections of the Examiner. It is requested that the Examiner withdraw these rejections.

## **REJECTIONS UNDER 35 U.S.C. § 103**

Claims 1, 12, 14, 29 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Evans et al. (U.S. Patent No. 4,516,569) in view of Schmitt et al. (U.S. Patent No. 3,739,773). Claims 2-11, 13, 15-28, 30 stand rejected under 35 U.S.C.

§103(a) as being unpatentable over Evans et al (U.S. Patent No. 4,516,569) in view of Schmitt et al. (U.S. Patent No. 3,739,773) in view of Bramlet (U.S. Patent No. 5,984,970). Applicants respectfully traverse these rejections.

Independent Claim 1 recites “a substantially elongated member comprised of a resorbable material; wherein the member has a first end portion interconnected with the first phalange … and a second end portion interconnectable with the second phalange”. As noted, Evans et al. does not teach the use of a resorbable material. Further, Schmitt et al. does not teach the use of a resorbable material to interconnect two phalanges. Neither is there a teaching to combine Evans et al. with Schmitt et al. to form a member that is operable to interconnect two phalanges and operable to resorb over a period of time. Further, none of the cited art includes the member “wherein the middle portion comprises a user formable curvature such that a fixed angled is formed between the first end portion and the second portion”. Evans et al. does not teach the member including a middle portion that is operable to be formed to a fixed angle or comprising a portion that is user formable to a fixed angle.

Independent Claim 15 recites “a substantially elongated member … wherein the member has a first end portion to engage the first phalange, a middle portion, and a second end portion to engage the second phalange … wherein the middle portion has a curvature such that a fixed angle is formed between the first end portion and the second end portion; wherein the angle is about 172 degrees.” None of the art cited by the Examiner teaches or fairly suggest a member having a first end connected to a phalange and a second end connected to a phalange with the middle portion having an angle of about 172 degrees.

Independent Claim 26 recites “a method for an operative procedure for fusing a first phalange to a second adjacent phalange ... providing a device comprising a substantially elongated member ... wherein the member has a first end portion, a middle portion, and second end portion ... wherein the middle portion has a curvature formed during the operative procedure by a user such that the first end portion and the second end portion have a fixed angle towards one another”. None of the art cited by the Examiner includes a method for an operative procedure where a middle portion has a curvature formed during the operative procedure by a user.

Similarly, independent Claim 29 recites “wherein the middle portion has a fixed curvature such that a fixed angle may be formed during the operative procedure between the first end portion and the second end portion”. As discussed above, the art does not teach or fairly suggest a device having a middle portion that includes an angle formed during an operative procedure.

Independent Claim 30 recites “wherein the fixed angle is about 172 degrees”. As discussed above, the art does not teach or fairly suggest a device having a fixed angle of about 172 degrees.

Further, Applicants submit that the application as filed includes description regarding the use of resorbable materials for use in fusion devices. As noted, Evans et al. does not teach using a resorbable material and Schmitt et al does not teach using a resorbable material in a fusion procedure. Therefore, Applicants submit that a device comprising a resorbable material as in the presently pending claims is neither taught nor fairly suggested by the art of record. Further, the application as filed includes description as to the use and results of a resorbable material contrary to the use of a

non-resorbable material. Therefore, Applicants submit that the use of a resorbable material is a patentable feature and the mere discussion of the use of other materials in Evans et al., when not disclosing the use of resorbable materials, does not teach or fairly suggest the presently pending claims.

Therefore, Applicants submit that each of the claims as presently pending are in condition for allowance and request that the Examiner remove each of the present rejections and allow each of the presently pending claims.

**CONCLUSION**

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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